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GARVEY SCHUBERT BAKER

OFFICE OF GENERAL COUNSEL

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Please reply to BRAD C. DEUTSCH  
bdeutsch@gsblaw.com  
TEL EXT 1793

May 3, 2016

**BY HAND DELIVERY**

Mr. Dan Petalas  
Acting General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

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**Re: MUR 7039 - Response of Bernie 2016 and Susan Jackson in her capacity as Treasurer & Senator Bernard Sanders**

Dear Mr. Petalas:

This response is submitted on behalf of the above-referenced respondents in relation to the April 14, 2016, letters from the Commission notifying Bernie 2016 (the "Campaign"), Ms. Jackson and Senator Bernard Sanders (collectively, "Respondents") of a complaint ("Complaint") filed by Brad Woodhouse of the American Democracy Legal Fund ("Complainant"), designated by the Commission as MUR 7039.

For the reasons set forth below, and pursuant to 52 U.S.C. § 30109, the matter should be dismissed.

**I. The Campaign's Sponsored Facebook Solicitation Fully Complied with FEC Disclaimer Requirements**

The Complaint alleges that the Campaign placed a sponsored advertisement (the "Advertisement")<sup>1</sup> on Facebook in violation of the Commission's disclaimer requirements for "public communications." See 11 C.F.R. §§ 100.26 (defining "public communications"); 110.11 (setting forth disclaimer requirements applicable to public communications). While the Campaign does not dispute that the Advertisement

<sup>1</sup> An image of the Advertisement is annexed to the Complaint as "Attachment A."



constitutes a "public communication" within the meaning of the Commission's regulations,<sup>2</sup> Complainant's own attachments demonstrate that the Advertisement complied with all applicable disclaimer requirements.

The Advertisement is subject to the Commission's "general content requirements" for public communications which, for communications authorized and paid for by a candidate's authorized committee, require that "the disclaimer must clearly state that the communication has been paid for by the authorized political committee." 11 C.F.R. § 110.11(b)(1). The Advertisement is also subject to the Commission's "specifications for all disclaimers," which require that the disclaimer "must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person or political committee that paid for and, where required, that authorized the communication. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked." 11 C.F.R. § 110.11(c)(1). Because a "communication placed for a fee on another person's Web site" is neither a radio or television communication, nor a printed communication, the Advertisement is not subject to any of the requirements specific to those types of communications.<sup>3</sup>

The Advertisement clearly and conspicuously indicates that it has been paid for by the Campaign. The "headline" of the Advertisement visibly states that the Advertisement is "Sponsored" by "Bernie Sanders."<sup>4</sup> This text appears directly to the right of the Campaign's logo. The only URL displayed in the Advertisement is "www.berniesanders.com," providing the reader with additional identifying information to determine the candidate and committee responsible for the Advertisement.<sup>5</sup>

By prominently indicating that Bernie Sanders and the Campaign have "sponsored" the Advertisement, and by displaying the Campaign's logo, as well as listing the Campaign's URL, which consists solely of the candidate's name, the Advertisement "give[s] the reader . . . adequate notice of the identity of the person or political committee that paid for . . . the communication." 11 C.F.R. § 110.11(c)(1). Because the Advertisement is subject only to the Commission's general content requirements for public communications, the Advertisement fully complies with the Commission's disclaimer requirements.

<sup>2</sup> Public communications are defined to include "communications placed for a fee on another person's Web site," a definition that encompasses the Advertisement. 11 C.F.R. § 100.26.

<sup>3</sup> See General Counsel's Report recommending case closure in MUR 6406, February 4, 2011, pp. 2-3 (noting that Internet pages do not constitute "printed communications" within the scope of 11 C.F.R. § 110.11(c)(2)) (recommendation adopted by unanimous 6-0 vote of the Commission, February 25, 2011).

<sup>4</sup> See Complaint, Attachment A.

<sup>5</sup> See *Concurring Statement of Vice Chair Bauerly and Commissioners Walther and Weintraub*, AO 2010-19 (Google, Inc.), p. 3 ("The Commission has recognized that URLs of political committees provide important identifying information. First, the URL typically contains some form of the candidate or political committee's name.").



## II. The Advertisement Links to a Campaign Landing Page – the Campaign’s Home Page -- with an Additional Disclaimer

Although Respondents are confident that the Advertisement is fully compliant with the Commission’s disclaimer requirements, out of an abundance of caution, Respondents reiterate that all six Commissioners have confirmed the necessity of applying a flexible standard to the method by which disclaimers may be delivered. For example, in their Concurring Statement in AO 2010-19 (Google), Vice Chair Bauerly and Commissioners Weintraub and Walther (the “Google AO Concurring Statement”) wrote that “[i]n circumstances where the delivery of a required disclaimer would be unwieldy or unfeasible, the Commission historically has allowed the disclaimer to be delivered in an alternate fashion, rather than eliminating the disclaimer requirement altogether.”<sup>6</sup> Accordingly, these Commissioners concluded that the Commission’s disclaimer requirements are satisfied where an online advertisement “displays the URL of the political committee’s website and the landing page contains a full disclaimer as required by 11 CFR 110.”<sup>7</sup> Even the Complainant concedes that in its consideration of AO 2011-09 (Facebook), “all six Commissioners would have supported a conclusion that a small graphical Internet advertisement may omit a disclaimer if it links to a website page containing a full disclaimer.”<sup>8</sup>

Although the Complainant observes that the website to which readers are redirected if they click on the Advertisement’s “Donate Now” button is an ActBlue webpage and therefore appropriately contains a disclaimer for ActBlue,<sup>9</sup> Complainant neglects to mention that the Advertisement also contains a link to the Campaign’s website, [www.berniesanders.com](http://www.berniesanders.com). Based on the supported drafts in AO 2011-09 (Facebook AO) and based on the Google AO Concurring Statement, it is clear that all six Commissioners agreed that, to the extent an online advertisement needs any disclaimer at all, these obligations are satisfied so long as the ad “displays the URL of the political committee’s website and the landing page contains a full disclaimer as required by 11 CFR 110.” The Advertisement does just that

<sup>6</sup> Id., p. 2.

<sup>7</sup> Id., p. 3.

<sup>8</sup> Complaint, p. 3. Although the Commission was not able to achieve the quorum required to issue a formal Advisory Opinion in AO 2011-09 (Facebook), Chair Bauerly and Commissioners Weintraub and Walther supported a draft of the Advisory Opinion that would have concluded that “[f]or Facebook ads that provide a link to a website or Facebook page with a complete and accurate disclaimer, the disclaimer requirement of 11 CFR 110.11 would be satisfied.” See Agenda Document No. 11-32-B (labeled “Draft C”). Vice Chair Hunter and Commissioners McGahn and Petersen supported a draft of the Advisory Opinion that would have concluded that no disclaimer was necessary because “Facebook’s small, character-limited ads qualify for the ‘impracticable’ exception to the disclaimer requirements at 11 CFR 110.11(f)(1)(ii).” See Agenda Document No. 11-32-A (labeled “Draft B”). The Advertisement here would have passed muster under either Draft B (which would have exempted the Advertisement from disclaimer requirements) or Draft C (which would have considered the disclaimer requirement satisfied because the Advertisement links to the Campaign’s website, which contains a full disclaimer).

<sup>9</sup> A copy of the ActBlue page is annexed to the Complaint as “Attachment B.” Though not directly related to the Campaign’s positions herein, it is worth noting that the ActBlue disclaimer could not have been omitted, because, as a political committee, ActBlue is required by Commission regulations to have a disclaimer on its own website. 11 CFR 110.11 (a)(1) (a disclaimer is required on “all Internet websites of political committees available to the general public”).



by including the URL of the Campaign's website, which takes the reader directly to the Campaign's homepage, which contains its own compliant disclaimer.<sup>10</sup>

### III. Conclusion

Because the Advertisement clearly and conspicuously indicates that it was paid for by the Campaign, the Advertisement satisfies the Commission's disclaimer requirements. Additionally, the Advertisement prominently features the URL of the Campaign's website, which prominently features its own disclaimer.

Accordingly, the Complaint should be dismissed.

Respectfully Submitted,

Brad Deutsch  
*Counsel to Bernie 2016  
and Senator Bernard Sanders*

GSB:7750579.4

<sup>10</sup> See [www.berniesanders.com](http://www.berniesanders.com). A copy of the Campaign's homepage as it existed on March 29, 2016, the date of the Complaint, is available through the Internet Archive Wayback Machine at <https://web.archive.org/web/20160329082820/https://berniesanders.com/?nosplash=true>.

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999 E Street, NW  
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STATEMENT OF DESIGNATION OF COUNSEL  
Please use *one* form for each Respondent/Entity/Treasurer  
FAX (202) 219-3923

MUR # Blanket 7039  
NAME OF COUNSEL: Brad Deutsch  
FIRM: Garvey Schubert Barer  
ADDRESS: 1000 Potomac Street, NW, Suite 200

Washington, DC 20007

TELEPHONE- OFFICE (202 ) 298-1793

FAX (202 ) 965-1729 Email Address: BDeutsch@gsblaw.com  
Web Address: \_\_\_\_\_

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

5/2/2016  
Date

B. J. Sanders  
Respondent/Agent -Signature

Candidate  
Title (Treasurer/Candidate/Owner)

RESPONDENT: Senator Bernard Sanders  
(Committee Name, Company Name, or Individual Named in Notification Letter)

MAILING ADDRESS: 221 Van Patten Pkwy  
(Please Print)

Burlington, VT 05408

TELEPHONE- HOME ( ) Compliance@BernieSanders.com

BUSINESS (855 ) 423-7643

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

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